

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMIL MOHD ABD-EL-RAHMAN
AL-GHAZALI

PLAINTIFF,

v.

DAVID DIGUGLIELMO ET AL.,
DEFENDANTS.

CIVIL NO.

07-4897

MEMORANDUM/ORDER

December 17, 2007

Now before the court is a *pro se* petition for writ of habeas corpus filed by Jamil Mohd Abd-El-Rahman Al-Ghazali, a.k.a. Jamil Elrahman, a state prisoner incarcerated in the State Correctional Institution at Graterford. Mr. Al-Ghazali earlier filed a habeas petition in this court that, like the instant petition, challenged the Pennsylvania Parole Board's decision to deny him parole. *See Elrahman v. Rozum*, No. 06-1336, 2007 WL 1462027 (E.D. Pa. May 17, 2007). Section 2244 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. §§ 2241 *et seq.*, provides that before a "second or successive" habeas petition can be filed with the district court, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to

consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without such authorization from the court of appeals, the district court lacks subject matter jurisdiction to consider the habeas petition. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *Felker v. Turpin*, 518 U.S. 651, 657 (1996); *Benchoff v. Collieran*, 404 F.3d 812, 816 (3d Cir. 2005); *In re Minarik*, 166 F.3d 591 (3d Cir. 1999).

Because petitioner’s current motion qualifies as a “successive” habeas petition, this court lacks subject matter jurisdiction to consider it. The “appropriate court of appeals” in which a motion should be filed for authorization to proceed in this court is the United States Court of Appeals for the Third Circuit. If the Third Circuit grants authorization, petitioner can then return to this court and refile his successive habeas petition.

Accordingly, this 17th day of December, 2007, it is hereby **ORDERED** that this civil action is **DISMISSED WITHOUT PREJUDICE** on the ground that this court lacks subject matter jurisdiction to consider it.

BY THE COURT:

/s/ Louis H. Pollak
Pollak, J.